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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,041	11/29/2005	Albrecht von Linde	1406/275	1321
25297 7590 12/03/2008 JENKINS, WILSON, TAYLOR & HUNT, P. A. Suite 1200 UNIVERSITY TOWER 3100 TOWER BLVD., DURHAM, NC 27707				
EXAMINER				
ADDIE, RAYMOND W				
ART UNIT		PAPER NUMBER		
3671				
MAIL DATE		DELIVERY MODE		
12/03/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/537,041

**Applicant(s)**

LINDE, ALBRECHT VON

**Examiner**

Raymond W. Addie

**Art Unit**

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 7-11, 13, 14 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-11, 13, 14, 16-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pare # 3,841,775.

Pare discloses a device and method for modifying the layout of vehicle traffic lanes in a wide road section, being arranged substantially within a track plane (10).

Said device comprising an arrangement consisting of individual curb elements (14) located in the region of this track section of the roadway, wherein the curb elements can be displaced at least individually, from an initial configuration of the track section into a new configuration for reshaping the racing course in this track section and wherein curb elements (14) are mounted to be displaceable within the track plane (10) from their initial configuration into a new configuration in the track section. See figs. 1-10; Cols. 2-

3. Although Pare does not disclose using the lane modifying device in a race track, it would have been obvious to one of ordinary skill in the art, to use the lane shifting device of Pare in a racetrack setting, in order to protect disabled vehicles from racing vehicles.

An adjusting device (18) is provided for displacing the curb elements (14), the device (18) comprising mechanical and electrical actuated drive (30) and means (12) for securing the new configuration.

2. Claims 1-4, 7, 11, 13, 14, 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bond # 6,457,900 B2 in view of Galiana et al. # 6,439,801 B1.

Bond discloses a device (10) capable of being used to modify the layout of a roadway in a wide track section of a road comprising an upper side.

Said device comprising:

An arrangement consisting of individual curb elements (16, 24) located in the region of this track section of a racing course, wherein the curb elements can be displaced at least individually or in groups, from an initial configuration of the track section into a new configuration for reshaping the racing course, wherein individually liftable curb elements are provided in the region of the track section which are aligned flush with the upper side of the track section in their initial configuration and further curb elements are provided that are tiltable in order to form a transition between lifted and non-lifted curb elements. What Bond does not disclose is using the tiltable and liftable curb elements in a race track. However, Galiana et al. teaches it is known that barriers can be equally well used in roadways, racetracks, speedways, runways and parking areas with predictable results in controlling vehicle behaviors. See Col. 1, lns. 18-30.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use the vehicle-speed sensitive curb units of Bond, in a racetrack setting, as taught by Galiana et al., in order to separate vehicles by vehicle speed, such as at entrance/exit from "pit row"; where it would be desirable to prevent high speed vehicles from entering.

With respect to claims 13, 16, 17 although Bond does not explicitly recite a curb element having a trapezoidal cross-section, it appears as though the curb element (16, 24) could form a trapezoidal cross-section during its displacement between initial and new configurations. Further Bond discloses the use of mechanical actuation (240) and device for securing the new configuration (28).

3. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bond # 6,457,900 B2 in view of Galiana et al. # 6,439,801 B1 as applied to claim 7 above, and further in view of Thompson # 5,509,753.

Bond in view of Galiana et al. disclose essentially all that is claimed, to include speed sensitive actuation of the curb element. But does not explicitly disclose the use of remote control. However, Thompson teaches that retractable curb elements (7) can be alternatively either remotely controlled from vehicles, manually operated from local sites, automatically operated over set time periods, or speed sensing equipment.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the curb element of Bond in view of Galiana et al., with a remote control, as taught by Thompson, in order to enhance control of traffic channeling devices in roadways and racetracks, as reasonably suggested by Galiana et al. See Thompson col. 1, lns. 5-10, 20-Col. 2, ln. 40.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing

date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 571 272-6986. The examiner can normally be reached on 7am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raymond W. Addie/  
Primary Examiner, Art Unit 3671

11/27/2008